

REMARKS

The Office Action of September 29, 2005, has been received and reviewed.

Claims 1-3, 5, 7, 9-27, 29, and 31-33 are currently pending and under consideration in the above-referenced application, each standing rejected.

Reconsideration of the above-referenced application is respectfully requested.

Claim Amendments

None of the amendments to the claims presented herein has been made in response to an objection to or rejection of the claims; rather, all of the claim amendments have been made merely to improve consistency and correct typographical errors. None of the claim amendments introduces new matter or narrows the scope of any claim.

Rejections under 35 U.S.C. § 102

Claims 1-3, 5, 7, 9-27, 29, and 31-33 stand rejected under 35 U.S.C. § 102(a) for being directed to subject matter that is purportedly anticipated by the disclosure of the article titled "For That Sweet Smell of Success, Some Try Scented Bowling Balls," published in the Wall Street Journal on March 14, 2005 (hereinafter "the 2005 WSJ Article").

Title 35, United States Code, section 102 provides:

A person shall be entitled to a patent unless—
(a) the invention was known or used by *others* in this country, or patented or described in a printed publication in this or a foreign country, *before the invention* thereof by the applicant for patent.
(Emphasis supplied).

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single reference which qualifies as prior art under 35 U.S.C. § 102. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

In addition to the requirement that a reference disclose each and every claim element identically, M.P.E.P. § 2121 indicates that the disclosure of the reference must also be enabling.

With respect to inherency, M.P.E.P. § 2112 provides:

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) . . . ‘To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill . . .’ *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1991).

The paragraph upon which the Office relies in its 35 U.S.C. § 102(a) rejections of claims 1-3, 5, 7, 9-27, 29, and 31-33, reproduced in full, provides:

Ed Gallagher, brand manager at Ebonite, says his company also experimented with scent and ‘didn’t think it was worth the effort.’ Brunswick says the notion of adding an aroma was discussed and quickly dropped. ‘I don’t know if the word ‘gimmick’ is the right word,’ says Ron Addison, marketing director of the consumer-products group. ‘I don’t feel like I’m losing any sales because our balls are not scented.’

First, M.P.E.P. § 2131.01 I. states that 35 U.S.C. § 102(a) only applies to information that was *publicly* known or used by others before the filing date of an application:

“The statutory language ‘known or used by others in this country’ (35 U.S.C. § 102(a)), means knowledge or use which is accessible to the public.” *Carella v. Starlight Archery*, 804 F.2d 135, 231 USPQ 644 (Fed. Cir. 1986). The knowledge or use is accessible to the public if there has been no deliberate attempt to keep it secret. *W.L. Gore & Assoc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983).

There is no indication in the 2005 WSJ Article, published four years after the filing date of this application, that any public disclosure of Ebonite’s purported experimentation or Brunswick’s alleged discussion was ever made before the filing date of the above-referenced application. Rather, it appears from the quotes that are included in the 2005 WSJ Article that any experimentation or discussion was purely internal and, thus, *not public*. Further, as the 2005 WSJ

Article was not published until long after the above-referenced application was filed, the statements that appear in the 2005 WSJ Article cannot be considered to comprise prior art under 35 U.S.C. § 102(a).

Second, the statements of Mr. Gallagher and Mr. Addison in the 2005 WSJ Article constitute nothing more than uncorroborated and unsubstantiated hearsay as to events which may or may not have happened at all. In fact, no contemporaneous evidence has been cited in the 2005 WSJ Article or otherwise provided by the Office that Ebonite or Brunswick actually discussed or even thought about the subject matter recited in any of claims 1-3, 5, 7, 9-27, 29, or 31-33 (or if they did when it actually happened)¹. Thus, Mr. Gallagher's and Mr. Addison's claims, made four years after the filing date (concerning events that allegedly happened years before that) should not even be considered by the Office. As such the Office cannot substantiate its assertions that the invention recited in any of claims 1-3, 5, 7, 9-27, 29, or 31-33 was actually known or used by others before the filing date of the above-referenced application.

As provided in MPEP 2132:

[t]he statutory language 'known or used by others in this country' (35 U.S.C. § 102(a)) , means knowledge or use which is accessible to the public.' *Carella v. Starlight Archery*, 804 F.2d 135, 231 U.S.P.Q. 644 (Fed. Cir. 1986). The knowledge or use is accessible to the public if there has been no deliberate attempt to keep it secret. *W.L. Gore & Assoc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983).

Here, the alleged statements by two representatives of competitive companies are not only insufficient to show prior knowledge of the invention, there is no indication that such prior knowledge was not kept secret. More importantly, the alleged statements are hearsay statements which are uncorroborated by any contemporaneous documentary or physical evidence.

The Federal Circuit has consistently found that the oral testimony of witnesses, speaking only from memory in regard to past transactions and in the absence of contemporaneous documentary or physical evidence is "of little probative value." *Lockheed Aircraft Corp. v. United States*, 553 F.2d 69, 75, 193 U.S.P.Q. 449, 454 (Fed. Cir. 1977). *See also, Upjohn Co. v.*

¹ If these events actually occurred, it is possible they happened after the filing date, or after conception by Storm. This is the problem with relying upon uncorroborated, after-the-fact,

Morva Pharmaceutical Corp., 225 F.3d 1306, 56 U.S.P.Q. 2d 1286 (Fed.Cir. 2000)(testimony of prior knowledge requires support of documentary evidence in order to receive probative weight). With respect to the alleged statements from the 2005 WSJ article, the Office has no publication, and has no sworn testimony, in declaration form or otherwise, from the two quoted individuals allegedly from two competitors of the Assignee. No foundation for their statements has been laid so that we know who is speaking, and with what authority or knowledge. Or so we can know when any alleged prior knowledge was gained or practiced. Such uncorroborated, hearsay statements (made by the reporter and not the individuals themselves) cannot be relied upon by the Office as prior art.

Third, assuming solely for the sake of argument that the alleged hearsay claims of Ebonite and Brunswick that appear in the 2005 WSJ Article did qualify as prior art under 35 U.S.C. § 102(a), they could not be considered as credible evidence upon which the Office may rely in rejecting the claims of the above-referenced application. In particular, the statements of Mr. Gallagher and Mr. Addison appear to have been made by competitors who have found themselves at a distinct disadvantage by virtue of their having missed out on the sustained, positive press that Storm Products has received, and because, as they admit, they did not expect the widespread commercial appeal of the invention recited in claims 1-3, 5, 7, 9-27, 29, and 31-33. Indeed, it is just as likely that they either did not consider (or seriously consider) the invention at all and, if they did, they did not believe it would work without impairing the performance, acceptance and commercial success of the bowling balls, Otherwise, they would have practiced the invention.

Fourth, again assuming, *arguendo*, that the statements upon which the Office relies could be considered prior art under 35 U.S.C. § 102(a), it is respectfully submitted that the allegations that have been made by Ebonite and Brunswick in the 2005 WSJ Article are not enabling disclosures. Several of the statements in the paragraph of the 2005 WSJ Article that has been reproduced above support this position. For example, Ebonite merely “experimented” with the idea of adding scent, then concluded that it wasn’t worth the effort. Brunswick claims to have

hearsay evidence.

“discussed,” then quickly dropped the idea. It is apparent that neither Ebonite nor Brunswick developed the idea to the point of enablement.

Fifth, even assuming that the prior experimentation with or discussion of adding scent to bowling balls is enabled, the statements that were made in the 2005 WSJ Article do not constitute an express or inherent description of each and every element of any of claims 1-3, 5, 7, 9-27, 29, or 31-33.

With respect to the bowling ball recited in independent claim 1, the allegations from the 2005 WSJ Article upon which the Office has relied do not include an express description that any of the bowling balls with which Ebonite “experimented” or any of the bowling balls that Brunswick “discussed” included “a mass comprising a two-part resin” or “a fragrance at least partially dissolved in at least a portion of [the] two-part resin.”

It is also respectfully submitted that these allegations do not amount to an inherent description of either element of independent claim 1. As the Office should be aware, bowling balls may be manufactured from a variety of materials and by a variety of processes. Thus, there is no requirement, or necessity, that a bowling ball include a mass comprising a two-part resin. As such, it is not inherent that the bowling balls with which Ebonite purportedly “experimented” and that Brunswick allegedly “discussed” included a two-part resin. Further, it is respectfully submitted that the allegations that have been made in the 2005 WSJ Article regarding scented bowling balls do not amount to an inherent description of “a fragrance at least partially dissolved in at least a portion of [the] two-part resin,” as it may not be necessary to dissolve fragrance into a bowling ball material to provide the bowling ball with a scent.

Therefore, the allegations that have been made by Ebonite and Brunswick in the 2005 WSJ Article do not amount to an anticipation of each and every element of independent claim 1, as would be required to maintain the 35 U.S.C. § 102(a) rejection of independent claim 1.

Each of claims 2, 3, 5, 7, and 9 is allowable, among other reasons, for depending directly from claim 1, which is allowable.

Claim 2 is further allowable since the relied-upon allegations from the 2005 WSJ article do not provide an express or inherent description of a bowling ball that includes a substantially nonporous mass.

Claim 3 is additionally allowable because neither Ebonite nor Brunswick alleges in the 2005 WSJ Article that the bowling balls with which Ebonite “experimented” or the bowling balls that Brunswick “discussed” included a substantially rigid mass.

Claim 5 is further allowable because neither Ebonite nor Brunswick has alleged in the 2005 WSJ Article that scents were “discussed” or “experimented” with in polyurethane bowling balls.

Claim 7 is also allowable since the 2005 WSJ Article provides no express or inherent description, or even allegation by Ebonite or Brunswick of a bowling ball that includes fragrance dispersed throughout at least a portion of the mass of a bowling ball.

Claim 9 is additionally allowable since the 2005 WSJ Article does not include any express or inherent description that the bowling balls that were purportedly “discussed” by Brunswick and “experimented” with by Ebonite included fragrance with a scent that corresponded to a color of a pigment in the bowling ball.

Independent claim 10 recites a method for manufacturing a bowling ball. The method of independent claim 10 includes:

- providing a liquid material;
- blending at least one fragrance directly into said liquid material;
- introducing said liquid material and said at least one fragrance into
a cavity of a mold; and
- curing said material with said at least one fragrance therein.

The 2005 WSJ Article does not provide any express or inherent description that the allegations that have been made by Ebonite or Brunswick’s purported “discussion” of adding scent to bowling balls would have been effected using any of the elements of independent claim 10. Therefore, the subject matter recited in independent claim 10 is not anticipated by the 2005 WSJ Article or any of the allegations made therein.

Claims 11-19 are each allowable, among other reasons, for depending directly or indirectly from claim 10, which is allowable.

Claim 11 is additionally allowable since the allegations that have been made by Ebonite and Brunswick in the 2005 WSJ Article do not include a disclosure, or express or inherent description, of a bowling ball manufacturing method that includes “providing a polyol.”

Claim 12, which depends from claim 11, is also allowable because neither Ebonite’s nor Brunswick’s allegations in the 2005 WSJ Article provide an express or inherent description of “introducing an isocyanate into [a mold] cavity with [a] liquid material and . . . at least one fragrance.”

Claim 13 depends from claim 12 and is further allowable since the 2005 WSJ Article does not expressly or inherently describe a bowling ball manufacturing method that includes mixing polyol and isocyanate.

Claim 14 is additionally allowable since the 2005 WSJ Article lacks any allegation by Ebonite that it “experimented” with dissolving a fragrance in a liquid material from which a bowling ball is formed, any allegation by Brunswick that it “discussed” dissolving a fragrance in a liquid material from which a bowling ball is formed, or any other express or inherent description that Ebonite, Brunswick, or any other party or person thought of or actually dissolved a fragrance in a liquid material from which a bowling ball is formed.

Claim 15 is further allowable because none of allegations that have been made in the 2005 WSJ Article includes any express or inherent description of dispersing fragrance throughout a liquid material in a process of manufacturing a bowling ball.

Claim 17 is also allowable since neither Ebonite nor Brunswick expressly or inherently describes, or even alleges, in the 2005 WSJ Article a method for manufacturing a bowling ball that includes “introducing a polymerization catalyst . . . into [a] cavity with . . . liquid material and . . . at least one fragrance.”

Claim 18, which depends from claim 17, is further allowable since neither the allegations of Ebonite nor the allegations of Brunswick in the 2005 WSJ Article amount to an express or inherent description of providing a polyol in manufacturing a scented bowling ball.

Claim 19 depends from claim 18 is additionally allowable since the 2005 WSJ Article lacks any express or inherent description that Ebonite experimented with or Brunswick discussed providing isocyanate in a process for manufacturing a scented bowling ball.

The method for forming an article of manufacture recited in independent claim 20 includes:

- providing a polyol;
- blending at least a fragrance directly into said polyol;
- substantially removing gas or gas bubbles from a mixture including said polyol and said fragrance;
- introducing said mixture and a polymerization catalyst therefor into a cavity of a mold; and
- permitting a blend including said polyol and said polymerization catalyst therefor to at least partially polymerize to form the article of manufacture.

Neither Ebonite's nor Brunswick's allegations in the 2005 WSJ Article constitutes an express or inherent description of any of the elements of the method of independent claim 20. Thus, under 35 U.S.C. § 102(a), the subject matter recited in independent claim 20 is allowable over the disclosure of the 2005 WSJ Article, including the allegations that have been made by Ebonite and Brunswick therein.

Each of claims 21-26 is allowable, among other reasons, for depending directly or indirectly from claim 20, which is allowable.

Claim 21 is further allowable since the 2005 WSJ Article and, more specifically, the allegations by Ebonite and Brunswick therein, provides no express or inherent description of a method for forming an article of manufacture that includes dissolving a fragrance in a polyol.

Claim 22 is additionally allowable because neither Ebonite nor Brunswick makes any allegation, or provides any express or inherent description, in the 2005 WSJ Article of dispersing at least one fragrance throughout a polyol.

Claim 23 is also allowable since Ebonite and Brunswick have not expressly or inherently described in the 2005 WSJ Article a method for forming an article of manufacture that includes blending a polyol and a polymerization catalyst therefor.

Claim 24 is further allowable because the relevant portion of the 2005 WSJ Article lacks any express or inherent description of introducing isocyanate and polyol into a mold cavity.

Independent claim 27 is directed to an article of manufacture. The article of manufacture of independent claim 27 includes a substantially rigid, substantially nonporous mass comprising a two-part resin and fragrance at least partially dissolved within at least a portion of the two-part resin. Again, the allegations of Ebonite and Brunswick that appear in the 2005 WSJ Article do not include an express or inherent description of a bowling ball or any other article of manufacture that includes a mass comprising a two-part resin with a fragrance at least partially dissolved therein. In addition, the allegations of Ebonite and Brunswick from the 2005 WSJ Article lack any express or inherent description of a rigid or nonporous bowling ball. Therefore, neither the 2005 WSJ Article nor the allegations made therein anticipates each and every element of independent claim 27, as would be required to maintain the 35 U.S.C. § 102(a) rejection of independent claim 27.

Claims 29 and 31-33 are each allowable, among other reasons, for depending directly or indirectly from claim 27, which is allowable.

Claim 29 is further allowable since the 2005 WSJ Article provides no express or inherent description, or even allegation by Ebonite or Brunswick of a bowling ball that includes fragrance dispersed throughout at least a portion of the mass of a bowling ball.

Claim 31 is further allowable because neither Ebonite nor Brunswick has alleged in the 2005 WSJ Article that scents were “discussed” or “experimented” with in polyurethane bowling balls.

Claim 33 is additionally allowable since the 2005 WSJ Article does not include any express or inherent description that the bowling balls that were purportedly “discussed” by Brunswick and “experimented” with by Ebonite included fragrance with a scent that corresponded to a color of a pigment in the bowling ball.

In view of the foregoing, it is respectfully requested that the 35 U.S.C. § 102(a) rejections of claims 1-3, 5, 7, 9-27, 29, and 31-33 be withdrawn and that each of these claims be allowed.

In addition, it is noted that the allegations that have been made by Ebonite and Brunswick in the 2005 WSJ Article would not be useful in rejecting any of the claims of the

above-referenced application under 35 U.S.C. § 102(a), as Ebonite and Brunswick both purportedly gave up on or discounted the value of adding fragrance to articles of manufacture such as bowling balls, which clearly teaches away from the subject matter recited in claims 1-3, 5, 7, 9-27, 29, and 31-33.

Rejections under 35 U.S.C. § 103(a)

Claims 1-3, 5, 7, 8, 10-27, 29, and 31 have been rejected under 35 U.S.C. § 103(a).

The standard for establishing and maintaining a rejection under 35 U.S.C. § 103(a) is set forth in M.P.E.P. § 706.02(j), which provides:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Shinbanai

Claims 1-3, 5, 7, 8, 10-27, 29, and 31 are rejected under 35 U.S.C. § 103(a) for being directed to subject matter that is assertedly unpatentable over the subject matter taught in U.S. Patent 4,722,815 to Shinbanai (hereinafter "Shinbanai").

Shinbanai teaches a method for forming a synthetic resin product that includes incorporating an additive, such as a fragrance, into cyclodextrin. The cyclodextrin-fragrance compound is dried, powdered, and mixed with a resin in such a way as to convert reducing sugars that are present as impurities in the cyclodextrin into chemically stable glycitols. The product is then dried, powdered, and mixed with resin to form a product which may subsequently be mixed into a larger quantity of compatible resin so that fragrance or another additive may be included in an article of manufacture made with the larger quantity of compatible resin. In each of the Examples provided by Shinbanai, this fragrance-including resin is formed into pellets or

ground into a powder. With respect to the types of resins in which the fragrance-imparting compound of Shinbanai may be used, the teachings of Shinbanai are limited to thermoplastic resins and thermoset resins. Shinbanai, col. 7, lines 59-66. This appears to be because thermoplastic and thermoset resins are often subjected to temperatures that may cause fragrance or other additives to decompose or evaporate.

If the resin of the fragrance-imparting compound comprises a thermoplastic material, the fragrance-imparting compound may be heated and, thus, dissolved into thermoplastic resins. If, however, the resin of the fragrance-imparting compound is a thermoset resin, or if the fragrance-imparting compound is used in a thermoset-resin that sets at a temperature that is less than the melting temperature of the fragrance-imparting compound, the powder or small pellets of the fragrance-imparting compound must be dispersed throughout the resin from which an article of manufacture is to be made.

Shinbanai is silent as to the hardness of the materials into which the fragrance-including compound is incorporated, although none of those disclosed appears to approach the hardness of a bowling ball.

It is respectfully submitted that there are several reasons that the teachings of Shinbanai do not support a *prima facie* case of obviousness against any of claims 1-3, 5, 7, 8, 10-27, 29, or 31.

First, it is respectfully submitted that Shinbanai does not teach or suggest each and every element of any of claims 1-3, 5, 7, 8, 10-27, 29, or 31. In particular, the teachings of Shinbanai are limited to use of a thermoplastic resin or thermoset resin, both of which are single-part resins, with fragrance incorporated therein to form articles of manufacture.

Independent claim 1, as well as claims 2, 3, 5, 7, and 8, which depend therefrom, requires that a bowling ball include a mass comprising a two-part resin.

Claims 11-13, 18, and 19, which depend either directly or indirectly from claim 10, recite methods for manufacturing bowling balls that include providing a polyol, which is well known to be one part of a two-part polyurethane. Claim 17, which also depends from independent claim 10, more broadly recites a bowling ball manufacturing method which includes “introducing

a polymerization catalyst for [a] liquid material into [a] cavity . . .,” or introducing both a first part and a second part of a two-part resin into a cavity.

Independent claim 20, as well as claims 21-26 which depend therefrom, are drawn to a method for manufacturing an article of manufacture which includes, among other things, blending fragrance into a polyol, or first part of a two-part polyurethane resin, and introducing that mixture and a polymerization catalyst, or second part of the two-part polyurethane resin, into a cavity of a mold. Independent claim 20, and claims 21-26 which depend therefrom, is further allowable over the asserted modification of teachings from Shinbanai since Shinbanai neither teaches nor suggests “substantially removing gas or gas bubbles from a mixture including [a] polyol and [a] fragrance . . .”

Claim 21 is further allowable since Shinbanai does not teach or suggest dissolving at least one fragrance in a polyol.

Claim 23 is additionally allowable because Shinbanai includes no teaching or suggestion of blending a polymerization catalyst for a polyol with a polymerization catalyst therefor.

Claim 24 depends directly from claim 23 and is also allowable since Shinbanai includes no teaching or suggestion of introducing an isocyanate into a cavity of a mold within which a mixture that includes the polyol and at least one fragrance is carried.

Like independent claim 1, independent claim 27, as well as claims 29 and 31 which depend therefrom, are directed to an article of manufacture which includes a mass that comprises a two-part resin.

Claim 31 is further allowable because neither the bowling ball art nor Shinbanai teaches or suggests an article of manufacture that comprises a two-part polyurethane into which at least one fragrance is at least partially dissolved.

As Shinbanai does not teach or suggest each and every element of any of claims 1-3, 5, 7, 8, 10-27, 29, or 31, it is respectfully submitted that the teachings of Shinbanai do not support a *prima facie* case of obviousness against any of claims 1-3, 5, 7, 8, 10-27, 29, or 31.

Second, since the teachings of Shinbanai are limited to articles of manufacture and manufacturing methods that include introducing fragrance into a single-part thermoplastic or

thermoset resin, Shinbanai teaches away from the subject matter recited in each of claims 1-3, 5, 7, 8, 10-27, 29, and 31. As a *prima facie* case of obviousness cannot be based upon references that teach away from the claimed invention, it is respectfully submitted that each of claims 1-3, 5, 7, 8, 10-27, 29, and 31 is allowable under 35 U.S.C. § 103(a).

Moreover, it is respectfully submitted that Shinbanai teaches away from the use of fragrance in two-part polyurethane resins that have been used to manufacture bowling balls. This is because the teachings of Shinbanai are limited to the use of fragrances in single-part resins. As a *prima facie* case of obviousness cannot be based upon references that teach away from one another, it is respectfully submitted that each of claims 1-3, 5, 7, 8, 10-27, 29, and 31 is allowable under 35 U.S.C. § 103(a).

Third, with respect to the subject matter recited in claims 1-3, 5, 7, 8, and 10-19, it is respectfully submitted that one of ordinary skill in the art would not have been motivated to modify the teachings of Shinbanai in the manner that has been asserted. A bowling lane typically comprises a hardwood surface which is usually coated with a wax or oil to reduce friction as the bowling ball is rolled therealong. As a bowling ball is thrown or rolled down a bowling lane, a spin is sometimes placed on the ball either by the player or by the central gravity of the ball. This causes the ball to “hook” somewhat diagonally across the lane. In order to successfully hit the pins to obtain a strike, the ball must contact the pin formation in one of a few specific locations. Similarly, in order to hit specific pins, the “hook” of a ball must be known, so that appropriate spin may be generated. For each bowling ball, the “hooking” ability is determined by the interaction of the ball surface with the lane. While each bowling ball should have the same “hook,” in practice, any substance added to a bowling ball changes the porosity, the density or other aspects of the bowling ball surface, altering the manner in which the bowling ball spins and, thus, the “hook” of the bowling ball. Players are known to select balls based on manufacturer and even color in order to maximize their ability to throw the ball correctly and consistently. One of ordinary skill in the art would know that adding any additional substance to a bowling ball would alter the surface of the ball, causing it to roll differently and “hook” sooner or later as it rolls down the lane. *See, e.g.*, the 2005 WSJ Article. Accordingly, without the

benefit of hindsight that has been provided to the Office by way of the disclosure and claims of the above-reference application, one of ordinary skill in the art would not have been motivated to add *fragrance* to the material of the bowling ball, as it would alter the expected playability of a bowling ball in an unreliable manner. To the contrary, one of skill in the art would have been discouraged from doing so. Certainly, he or she would not have known that adding a fragrance would not adversely affect the performance of the ball, or possibly even improve its performance, as has been the surprising and unexpected result of adding a fragrance. *See*, Declaration of John W. Chrisman III, dated March 27, 2006.

Shinbanai in View of Anderson

Claims 9, 32, and 33 stand rejected under 35 U.S.C. § 103(a) for being drawn to subject matter that is purportedly unpatentable over the subject matter taught in Shinbanai, in view of teachings from U.S. Patent 4,762,493 to Anderson (hereinafter “Anderson”).

Anderson teaches scented crayons, which are formed from wax, and that the scents of crayons may correspond to their colors. It is well known that waxes are thermoplastic materials, not two-part resins.

Claims 9 is allowable, among other reasons, for depending directly from claim 1, which is allowable.

Claims 32 and 33 are both allowable, among other reasons, for respectively depending directly and indirectly from claim 27, which is allowable.

Further, it is respectfully submitted that claims 9, 32, and 33 are each allowable because a *prima facie* case of obviousness has not been established against any of these claims. Specifically, while Anderson teaches crayons with scents that correspond to their colors, Anderson merely provides an additional teaching of a one-part material, wax, which has fragrance mixed therein. Thus, Anderson does not remedy the previously discussed deficiencies of Shinbanai.

Therefore, withdrawal of the 35 U.S.C. § 103(a) rejections of claims 9, 32, and 33 is respectfully requested, as is the allowance of each of these claims.

Declaration of John W. Chrisman, III

The compact discs (CDs) that were submitted as exhibits to the June 24, 2005 Declaration of John W. Chrisman, III, are not subject to the requirements of 37 C.F.R. § 1.52, as they do not include documents that are to become a permanent part of the above-referenced file. Rather, they merely comprise evidence, akin to the video tape evidence that may be presented to the Office in accordance with M.P.E.P. § 713.01 IV. If any of the files on the CDs could not be viewed by the Examiner, the undersigned attorney would be happy to provide additional copies, or to supply a videotape that includes all of the video segments to the Office.

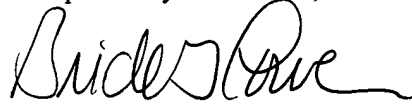
The Examiner's disregard for the unsolicited evidence of nonobviousness, particularly of the previously unmet need in the art and additional market share that shows the unexpected success (see the somewhat derogatory statements of Ebonite and Brunswick that appear in the 2005 WSJ Article) of the claimed subject matter is untenable.

In a second Declaration of John W. Chrisman, III, dated March 27, 2006, Mr. Chrisman has further clarified that the positive press received by Storm in connection with the scented bowling ball was *not* solicited in any way by Storm or anyone acting on its behalf. Moreover, Mr. Chrisman has further clarified that the dramatic and unexpected commercial success of the scented bowling ball was not the result of increased marketing expenditures.

CONCLUSION

It is respectfully submitted that each of claims 1-3, 5, 7, 9-27, 29, and 31-33 is allowable. An early notice of the allowability of each of these claims is respectfully solicited, as is an indication that the above-referenced application has been passed for issuance. If any issues preventing allowance of the above-referenced application remain which might be resolved by way of a telephone conference, the Office is kindly invited to contact the undersigned attorney.

Respectfully submitted,



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